

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 25Mar2002

Case Nos.: **2001-LHC-1625**
2001-LHC-1626

OWCP Nos.: **18-72985**
18-74180

In the matter of

JESUS CASTILLO,
Claimant,
v.

**CONTINENTAL MARITIME OF SAN DIEGO/
MAJESTIC INSURANCE COMPANY,**
Employer/Carrier,
and

**DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,**
Party-In-Interest.

DECISION AND ORDER APPROVING SETTLEMENT

This proceeding arises from a claim filed under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. 901 et seq.

The above noted case file was forwarded to the undersigned for the purpose of scheduling a hearing in San Diego, California during the week of July 15-19, 2002. On February 21, 2002, Counsel for the Employer, Frank B. Hugg, Esq., advised the undersigned that the case had settled and the parties had submitted an 8(i) settlement package to the U. S. Department of Labor, Office of Administrative Law Judges, Washington DC on January 16, 2002. However, after a search of our formal case file, the 8(i) settlement package could not be found. Therefore, on February 25, 2002, Mr. Hugg resubmitted

the 8(i) settlement package to the undersigned. This document was signed by Claimant and his two witnesses, by Counsel for the Claimant, and by Counsel for the Employer, and the contents are attached to this order.

By the terms of this settlement, Claimant is to receive ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00) new money to Claimant and Claimant's attorney. The net new money to the Claimant shall be NINETY THOUSAND TWO HUNDRED THIRTY-TWO AND no/100 DOLLARS (\$90,232.00) (rounded down from \$90,232.41). In the proceedings before the OWCP, the Claimant's attorney waives any request for fees and costs. The parties advise, however, that the Claimant's attorney will be awarded fees and costs before the state Workers' Compensation Appeals Board (WCAB) in the approximate amount of \$20,000.00 and in addition to that sum \$4,768.00 (rounded up from \$4,767.58) will be reimbursed for out of pocket costs and expenses.

The Employer has resolved the following potential lien claims by agreeing to pay: (1) Dr. Alfred Caliguiri, \$50.00; and (2) Richard Foreman L. Ac. \$1,350.00.

The Employer has also agreed to pay potential liens and the claimant has agreed to accept the following: (1) \$6,000.00 to United Healthcare Recoveries of its \$10,045.31 unreimbursed expenses for surgery; (2) \$1,300.00 to Bob's Rexall Drugs of its bill of \$2,388.69; (3) \$1,000.00 to Dr. James McClurg of his bill of \$1,781.31; and \$5,241.50 to EDD of its bill of \$17,472.00 for the period July 23, 1999 to July 20, 2000, and no other period.

To date therefore the Employer has paid no medical expenses and has paid none in the last three years.

The estimate of future medical expenses is in dispute, but for purposes of this settlement, the parties allocate a value of \$5,000.00 to such future medical care. The \$5,000.00 is expressly included in the net settlement to the Claimant of \$90,232.00.

This settlement also discharges Employer/Carrier from any possible rights that the Claimant may have whether now known or ascertained, or which may hereafter arise or develop as a result of said injury including any and all liability of said Employer and said Insurance Carrier and their attorneys and

each of them to the dependents, heirs, executors, representatives, attorneys, administrators or assigns of said employee for injuries of November 4, 1998; CT July 15, 1998 - July 15, 1999; June 10, 1996; and February 24, 1995.

Having considered the settlement application under the criteria of 20 C.F.R. § 702.243 (f) and considering all the circumstances, I find the amount of the settlement is adequate and was not procured under duress. Accordingly, the settlement is hereby approved under Section 8(i) of the Act, and it is attached to this order.

Under the terms of the settlement, Employer will not pay attorney fees and costs to Gerald D. Brody, Esq. in prosecuting the claim under the provisions of 33 U.S.C. 908(i) of the Longshore and Harbor Workers' Compensation Act.

ORDER

1. Employer shall pay all amounts as provided in the stipulations between Claimant and Employer.
2. Employer shall receive credit for all payments that have been made.

A
RICHARD K. MALAMPHY
Administrative Law Judge

RKM/CCB/ccb
Newport News, Virginia